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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

January 20, 1998

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Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: C.C. Docket No. 94-54

Dear Ms. Salas:

Herewith transmitted, on behalf of United States Cellular Corporation, are an original and four copies of its Reply Comments in the above-referenced proceeding.

In the event there are any questions concerning this matter, please communicate with this office.

Very truly yours,


Peter M. Connolly

Enclosure

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JAN 20 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Interconnection and Resale) C.C. Docket 94-54
Obligations Pertaining To)
Commercial Mobile Radio)
Service)

United States Cellular Corporation ("USCC") hereby files its Reply Comments in the above-captioned proceeding. In USCC's initial comments, filed in response to the FCC's December 5, 1997 public notice, USCC opposed any "automatic" FCC roaming requirement as being an unnecessary intrusion into a thriving and increasingly competitive marketplace, yet another expensive bureaucratic mandate amid many others, and as being extraordinarily difficult to enforce owing to the complexity of adjudicating claims of "non-discrimination" among "similarly situated" carriers.

Nothing in the comments filed by other parties has caused USCC to alter its position fundamentally. The bulk of comments continue to oppose any new "automatic" roaming requirement for the reasons

stated by USCC and for other equally valid reasons.¹

The comments favoring an automatic roaming rule for CMRS carriers can be divided into two categories. The first are PCS licensees who believe they are sometimes being denied roaming agreements with cellular carriers, both "in market" and "out of market" and believe that FCC action is therefore warranted.² The second are CMRS resellers, as represented by their trade association, who seek the right to secure roaming agreements on the same basis as other CMRS carriers.

With respect to the first category, USCC has previously stated that it has negotiated roaming agreements with six PCS carriers. It is in negotiations with eleven others. USCC is willing to negotiate both "in market" and "out of market" agreements with PCS carriers or other CMRS carriers and believes that other cellular carriers should do so.

¹ See, e.g. Comments of CTIA, Nextel Communications, Inc., AirTouch Communications, Inc., BellSouth Corporation, PCIA, Centennial Cellular Corporation, Sprint Spectrum L.P., Rural Telecommunication, Mobex Group, 360° Communications Company, AMTA, GTE Service Corporation and Southwestern Bell Mobile Systems/Pacific Bell Mobile Services.

² See, e.g. Comments of Cincinnati Bell Mobile, Omnipoint Communications, Inc., Meritel Communications, L.P., and AT&T Wireless, Inc.

However, it is a giant step from the FCC stating that such arrangements are desirable, to the FCC requiring "automatic" roaming agreements among all CMRS carriers. Taking that step will inexorably will involve the FCC in regulating the prices charged in hundreds, if not thousands of roaming agreements, as well as in regulating the myriad other terms and conditions of such agreements.

Proponents of automatic roaming have responded inadequately to this argument. AT&T Wireless attempts to deal with the problem in one sentence:

"The Commission should also make it clear that charging higher rates for in-market roaming than out of market roaming is impermissible discrimination, unless such higher charges are reasonably based on factors other than the roaming carrier's identity as a competitor."

AT&T Wireless Comments, at p. 10. But if "automatic" roaming is required, the FCC's adoption of such an unexceptionable general principle will hardly be enough. Parties will inevitably disagree on what price differentials are "reasonable" and the FCC will have to referee the resulting disputes.³

³ With respect to AT&T's alleged difficulties in obtaining satisfactory roaming agreements, certain factors may be at work in addition to those to which it refers. AT&T Wireless is part of a giant company with many and complex interests. Cellular companies which also provide long distance service, for example, which are negotiating

A survey of existing roaming contracts will show huge differences in prices and other terms and conditions based on an infinite variety of technical and competitive factors.⁴ Would an automatic roaming requirement mandating "non-discriminatory" terms invalidate those contracts? As we have noted previously, this is a morass which the FCC should not enter.

USCC understands the frustration of PCS providers who cannot obtain roaming service. But, we submit, it would be preferable for such carriers to use the existing process to file complaints under Section 208 of the Communications Act, invoking the prohibitions on "unjust and unreasonable" charges in Section 201 and the prohibition on "unjust and unreasonable" discrimination of Section 202 of the Act, and allow the Commission to adjudicate individual complaints when necessary, than to prescribe a "one size fits all"

roaming agreements with AT&T Wireless may weigh the impact of such agreements on AT&T's long distance operations in relation to their own. Roaming agreements often inevitably reflect such complex considerations, which is one more reason why the FCC should stay its hand here.

⁴ We also would point out, as have others, that the opportunity to negotiate such agreements freely is itself a spur to competition and service differentiation, which an automatic roaming requirement, which, by necessity, would involve some type of price uniformity, would close off.

general principle.

Of course the results of such adjudications would serve as precedents in subsequent complaint proceedings.⁵ But, as with the common law, a case by case adjudication would allow for individual circumstances to be taken into account and would provide for a gradual evolution of existing contracts in accordance with the principles announced by the FCC in such adjudications. That approach is clearly the preferred one.

USCC also wishes to take issue with the arguments made in the comments filed by the Telecommunications Reseller Association ("TRA") to the effect that CMRS carriers must offer roaming arrangements to resellers on the same basis as to other CMRS carriers and that roamers should have the right to "purchase and resell" roaming service.

The FCC has never required CMRS carriers to do either of those things and should not do so now.

CMRS licenses have incurred huge expenditures to build out their systems, expenses which resellers do not incur. Facilities-based CMRS carriers also have all of the responsibilities and ever-increasing obligations of FCC licensees, which resellers do not

⁵ And, the threat of adverse results in such complaint proceedings would serve to encourage settlements.

have. Thus resellers and CMRS licensees do not and should not stand in the same shoes with respect to any roaming "entitlements."

In many instances, and particularly for small, rural CMRS licensees, roaming revenues have been vital to achieving profitability and thus system buildout. If TRS's proposal were adopted, resellers, who have incurred none of the costs of system buildout, would, as TRS forthrightly notes, seek opportunities to undercut roaming prices through a new form of "arbitrage," regardless of its impact on CMRS system costs. This type of "cream skimming" is not required by Sections 201 and 202 and would not be just or reasonable.⁶ Resellers should participate in cellular roaming, but on terms which are mutually beneficial to CMRS licensees and resellers. The principle of "non-discrimination" should not be used to secure illegitimate benefits.

Conclusion

For the foregoing reasons and those given previously by USCC and other CMRS carriers, the FCC should not adopt an automatic roaming requirement.

⁶ Also, for the Commission to adjudicate the appropriateness of CMRS/reseller roaming prices in a regime of automatic roaming would, if anything, be even more complex than resolving issues of CMRS/CMRS roaming prices.

Respectfully submitted,

UNITED STATES CELLULAR CORPORATION

By:

A handwritten signature in dark ink, appearing to read "Peter M. Connolly", is written over a horizontal line.

Peter M. Connolly

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January 20, 1998

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CERTIFICATE OF SERVICE

I, Theresa Belser, a secretary in the offices of Koteen & Naftalin, L.L.P., hereby certify that true copies of the foregoing "Reply Comments" were sent to the following, by First Class United States mail, postage prepaid this 20th day of January 20, 1998:

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